



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CCO/155509

PRELIMINARY RECITALS

Pursuant to a petition filed February 14, 2014, under Wis. Admin. Code § HA 3.03, to review a decision by the Milwaukee Early Care Administration - MECA in regard to Child Care, a hearing was held on April 17, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether the agency properly seeks to recover an overissuance of child care benefits in the amount of \$8,215.40 from the Petitioner for the period of August 4, 2013 – September 30, 2013.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Children and Families
201 East Washington Avenue
Madison, Wisconsin 53703

By: Keisha Love

Milwaukee Early Care Administration - MECA
Department of Children And Families
1220 W. Vliet St. 2nd Floor, 200 East
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.

2. Petitioner was employed by [REDACTED] on July 8, 2013. She contacted the agency on July 19, 2013 to report her new employment.
3. On August 1, 2013, the Petitioner supplied employment verification and a pay statement from [REDACTED]
4. [REDACTED] [REDACTED] has not reported any wages for the Petitioner and had no worker's compensation for the 3rd quarter of 2013.
5. On June 17, 2013, the Petitioner received authorization for two of her children to attend [REDACTED] beginning June 16, 2013 and ending August 31, 2013.
6. On July 15, 2013, the agency issued a Child Care Authorization Information Notice informing the Petitioner that new authorizations were issued for an additional four of her children for [REDACTED] beginning July 7, 2013 and ending August 31, 2013.
7. On August 2, 2013, the agency issued a Notice of Eligibility Child Care to the Petitioner informing her that she is eligible for child care beginning August 1, 2013 for six children.
8. On August 24, 2013, the agency ended all authorizations due to [REDACTED] having no worker's compensation.
9. On August 27, 2013, the agency issued a Notice of Eligibility Child Care to the Petitioner informing her that her child care eligibility is ending September 30, 2013 for six children.
10. On September 18, 2013, the Petitioner contacted the agency to report that her employer obtained worker's compensation and she would like her authorizations to continue. The agency contacted the Department of Workforce Development and confirmed that the employer did not have worker's compensation insurance.
11. Petitioner's last day as an employee of [REDACTED] was September 20, 2013.
12. On September 25, 2013, Petitioner received authorization for four children for child care benefits effective August 25, 2013 – April 4, 2014. On September 30, 2013, the Petitioner received authorization for an additional two children for benefits effective August 25, 2013 – April 15, 2014.
13. On February 10, 2014, the agency issued a Child Care Client Overpayment Notice to the Petitioner informing her that the agency intends to recover an overissuance of child care benefits in the amount of \$8,215.40 for the period of August 4, 2013 – September 30, 2013.

DISCUSSION

Wis. Stat., §49.195(3), provides as follows:

A county, tribal governing body, Wisconsin works agency or the department shall determine whether an overpayment has been made under s. 49.19, 49.148, 49.155 or 49.157 and, if so, the amount of the overpayment.... Notwithstanding s. 49.96, the department shall promptly recover all overpayments made under s. 49.19, 49.148, 49.155 or 49.157 that have not already been received under s. 49.161 or 49.19(17) and shall promulgate rules establishing policies and procedures to administer this subsection.

The Wisconsin Shares Child Care Manual (CCM) clarifies the Department of Children and Families' policies concerning child care benefits and the most recent version, updated on December 10, 2013, can be found on line at <http://dcf.wisconsin.gov/childcare/wishares/manual.htm>

Child care subsidies are authorized in Wis. Stat., §49.155, and thus they are within the parameters of §49.195(3). Recovery of child care overpayments also is mandated in the Wis. Admin. Code, § DCF

101.23. An overpayment is any payment received in an amount greater than the amount that the assistance group was eligible to receive, regardless of the reason for the overpayment. Wis. Admin. Code, § DCF 101.23(1)(g). Recovery must occur even if the error was made by the agency, but if so it only goes back one year from the notification date. CCM, §2.5.1.2.

Wis. Admin. Code §DCF 201.04(5)(a)(2)(b) states that a parent must be participating in an “approved activity” to receive child care benefits and refers to Wis. Stats. §49.155(1m) to define an “approved activity”.

Wis. Stats. §49.155(1m) states:

A Wisconsin works agency shall determine eligibility for a child care subsidy under this section. Under this section, an individual may receive a subsidy for child care for a child who has not attained the age of 13 ...if the individual meets all of the following conditions:

(a) The individual is a parent of a child who is under the age of 13 ...and child care services for that child are needed in order for the individual to do any of the following:

1. Meet the school attendance requirement under s.49.26(1)(ge)[Learnfare, for minor parents].

1m. Obtain a high school diploma ...

2. Work in an unsubsidized job...

3. Work in a Wisconsin Works employment position

3m. Participated in a job search or work experience component of the food stamp program.

4. If the Wisconsin works agency determines that basic education would facilitate the individual's efforts to maintain employment, participate in basic education ... An individual may receive aid under this subdivision for up to 2 years.

5. Participate in a course of study at a technical college, or participate in educational courses that provide an employment skill, as determined by the department, if the Wisconsin works agency determines that the course or courses would facilitate the individual's efforts to maintain employment. An individual may receive aid under this subdivision for up to 2 years.

(Emphasis added).

Per CCM §1.5.3, “the Wisconsin Shares Child Care Assistance program recognizes only two categories of “unsubsidized employment”...: 1) Working for a qualified employer who has a Federal Employer Identification Number (FEIN) or 2) Being legitimately self-employed.”

CCM §1.5.3.1 defines a “Qualified Employer” as an employer having a FEIN documented in the CARES system. It further states that:

If the employer is a child care provider or a business owned or managed by the provider, or if the reported employment appears to be questionable, the following employer items must be verified...

- The employer must have a Worker's Compensation Insurance policy for its employees.
- The employer must comply with Wisconsin minimum wage law for all employees.
- The employer must file a New Hire report on the employee within 30 days of the hiring date.

- The employer must report wages to Unemployment Insurance unless exempt. (Emphasis added).

An Operations Memo dated September 6, 2013, that predates the most recent, December 2013, update of the CCM also indicates that:

Section 1.5.3.1 requires that the worker must verify that an employer is a qualified employer if the employer is a child care provider, a business owned or managed by the provider, or if the reported employment appears to be questionable. This operations memo updates criteria used in verifying whether or not an employer is qualified..."

The agency seeks to recover an overpayment from the Petitioner because her employer [REDACTED] was not reporting Petitioner's quarterly wages and the employer did not carry worker's compensation. Thus, the agency concluded that the employer was not a qualified employer. Because the Petitioner was not working for a qualified employer, the agency asserts that she was not engaged in an approved activity while she was employed with [REDACTED] and therefore, child care benefits should not have been authorized during the period of her employment there.

The Petitioner contends that she has tried unsuccessfully to get the employer to report her wages. She argues that she did not know the employer was not "qualified." The agency concedes that it became aware that the employer was not qualified and that Petitioner's eligibility should have ended sooner. Though the error in continuing benefits was an agency error, it is required to recover any overissuance within 12 months.

Though I recognize that the Petitioner did not know that her employer is not "qualified" and she has tried to get the employer to report wages, the regulations are clear that [REDACTED] was not "qualified" and therefore the Petitioner was not eligible for child care benefits during the period of time she was employed there. I reviewed the agency's determination regarding the amount of benefits and do not find any errors in the calculations.

CONCLUSIONS OF LAW

The agency properly seeks to recover an overpayment of \$8,215.40 from the Petitioner for an overissuance of child care benefits for the period of August 4 – September 30, 2013.

THEREFORE, it is

ORDERED

That the Petitioner's appeal is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

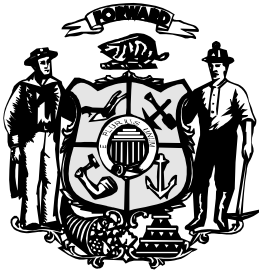
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Children and Families. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 201 East Washington Avenue, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 24th day of June, 2014

\sDebra Bursinger
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on June 24, 2014.

Milwaukee Early Care Administration - MECA
Public Assistance Collection Unit
Child Care Fraud